

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/09/2002

CORAM

THE HONOURABLE MR JUSTICE A.K.RAJAN

Second Appeal No.1055 OF 1992

Sri Ranganathanswamy Etc.,
Devasthanam, Trichy
rep by its Executive Officer Appellant

-Vs-

P.Subramanian Respondent

Appeal against the judgment and decree in A.S.No.69 of 1988 dated 31.08.1990 on the file of the Sub-Court, Devakottai reversing the Judgment and Decree in O.S.No.576 of 1982 dated 28.11.1993 on the file of the District Munsif, Manamadurai.

!For Appellant : Mr.P.Gopalan

^For Respondent : Mr.A.Kothandaraman

:JUDGMENT

This Second Appeal has been filed against the reversal decree.

2. The suit was filed by the plaintiff temple for declaration of title and also for recovery of possession with respect to 88 cents of Nanja lands in S.No.115/9, Vellikurichi Village, Manamadurai District.

3. The case of the plaintiff is that the property was an inam in favour of the temple and it is a service inam called Akshayamanyam. The minor inams (both warams) were granted to the plaintiff temple. The Settlement Tahsildar granted patta under Ex.A.1, after conducting enquiry in accordance with Inam Abolition Act. This Akshayamanyam was enjoyed by Srinivasa Rangachariar who was Archagar conducting Poojas in the temple. He contested the matter stating that he was entitled for patta. That contention was rejected and patta was granted in favour of the plaintiff under Ex.A.1. The appeal to Inam Abolition Tribunal in R.A.422/70 preferred by Srinivasa Rangachariar, was dismissed under Ex.A.2. Thereafter, he filed an appeal to the High Court in STA.No.78/76 and the High Court also confirmed the order of the Inam Abolition Tribunal by order dated 01.11.1978. In the mean while, Srinivasa Rangachariar leased out the property. But the Lessee denied the

title of the temple and therefore the plaintiff temple filed a suit for declaration of title and recovery of possession. The trial Court decreed the suit as prayed for rejecting the claim made by the defendant for title by adverse possession over the property. Against that, the appeal was filed by the respondent/defendant, and the appellate Court allowed the appeal and dismissed the suit. Against that judgment, this second appeal has been filed.

4. The learned counsel appearing for the appellant submits that in case of Inam lands, the Civil Court has no jurisdiction to decide the title and only the Special Tahsildar appointed under the Act is empowered to decide the title over the property and to grant patta. Following the rules framed under the Act, the Special Tahsildar conducted an enquiry after due publication to all the persons interested in the lands and only thereafter the matter was disposed of and patta was granted after hearing all the objections. Finally the patta was granted in favour of the temple with respect to both warams. Therefore, both warams are confirmed on the temple and only 'mel waram' right was given to Srinivasa Rangachariar, since he was the Poojari performing Poojas in the temples. Therefore, he is not entitled to patta or he is not the owner of the property. Therefore, any lease granted by him will not have any effect. Therefore, the respondent herein has no right to have any title by adverse possession.

5. The learned counsel also referred to the Judgment of a Division Bench of this Court in Periya Muthu Naicker and another Vs. Arulmighu Sevantheeswarar Koil rep. by its Trustee, Rengasami Naicker. The Assistant Settlement Officer, Thanjavur 1997 (2) LW 159 (Paragraphs 5 and 9), in which this Court has held following the earlier decision of this Court, that "where the grant is in favour of the temple and permanently made of both warams and confirmed as long as the temple exists, mere long possession by any one other than the temple or as representing the temple will not by itself militate against the nature of the grant of both warams in favour of the institution." Further, (in Paragraph-9,) this Court in a similar circumstance considered that "Possession of the transferee cannot be considered to be adverse to the religious endowment from the very beginning and the succeeding manager's right to challenge the said transfer could not be held to have been lost." Therefore, the plea of adverse possession against the temple is not maintainable.

6. The learned counsel for the respondent has submitted that he filed an appeal before the Inam Abolition Tribunal for grant of patta in R.A.No.53/80 for grant of patta and that was remanded back to the Assistant Settlement Officer, Madurai who inturn after conducting enquiry has rejected his plea on 03.08.1999 in S.R.No.1/CE/Minor/94 (30/63) confirming the grant of patta in favour of the temple.

7. In view of the decision referred to above, inasmuch as both the warams are conferred only on the temple and patta has been granted to the temple by the appropriate authority under the Inam Abolition Act. Therefore, the temple is the absolute owner of the property. Therefore, the 'lease' by the service inam holder to a third party such as the defendant herein, does

not create any right in favour of such a 'lessee'. Inasmuch as it is a service inam, it can be enjoyed by the Poojari as long as he serves as a Poojari in the temple; the Poojari has no other right other than the right to enjoy the property. Hence, the status of the defendant is only a trespasser and not a lessee. Further as long as the temple exists no person by mere long possession will get any right adverse to the temple. When that be so, the dismissal of the suit by the appellate Court rejecting that claim of the temple is not sustainable. It is liable to be set aside and hence it is set aside.

8. The Judgment and decree passed by the trial Court is restored. The appeal is allowed. Considering the facts of the case, parties to bear their own costs.

11.09.2002

Index:yes

Internet: yes

ksr.

To

1. The Subordinate Judge, Devakottai
2. The District Munsif, Manamadurai.

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